

California Regional Water Quality Control Board  
Santa Ana Region

August 25, 2000

ITEM: 23

SUBJECT: Executive Officer's Report

DISCUSSION:

1. **August 8, 2000 Workshop on Proposed Watershed-Wide Waste Discharge Requirements for Storm Water Discharges Associated with New Developments in the San Jacinto Watershed** – A workshop was held on August 8<sup>th</sup> in the California Tower in Riverside to get input from interested parties concerning the proposed general permit for storm water discharges from new development in the San Jacinto Watershed. A draft of the permit was distributed to interested parties in late July, and is included in your agenda packages for the August 25 meeting. The workshop was very well attended, including representatives of developers, engineering consultants, Riverside County staff and City of Lake Elsinore staff. Regional Board staff presented an overview of the general water quality issues (impaired status of Canyon Lake and Lake Elsinore), an interpretation of the legal requirements related to regulation of new discharges to impaired water bodies, and the TMDL and monitoring efforts that have recently been initiated in the watershed.

The proposed watershed permit was not warmly received by either the agencies or by the developers. Many objections were raised that can be generally categorized into a few broader issues: (1) there is no legal requirement that drives the development of this proposed permit, (2) there is no legal requirement for the numeric limits that are included in the draft permit, (3) there are significant concerns with the threat of third-party lawsuits, (4) there are concerns with how compliance will be determined, considering that flows from upstream areas often run through areas proposed for development, (5) there are concerns by agencies that will be responsible for long-term compliance once development is complete, and (6) there was not enough time provided to review and comment on the proposed order. A lively discussion on these topics ensued for more than 2½ hours. The developers typically took the position that the existing general storm water permit for construction should be perfectly adequate to protect water quality. They also felt that it was inappropriate to initiate these more-stringent requirements designed to address the matter of impaired water bodies. They pointed out that there are over 500 other impaired water bodies throughout the state, but none of the other regions are implementing these measures. They were also concerned that we might be following guidance from U.S. EPA, Region

IX, that might not be consistent with U.S. EPA national policy and guidance. Further, a building industry attorney indicated that there is no requirement for staff to propose a permit with numeric limits. This is in response to a recent court decision that held that the storm water program's use of BMPs to achieve water quality goals is adequate, even to protect impaired water bodies. Staff will be responding to these and other comments concerning the proposed permit.

I believe that the workshop truly served its purpose. The dialogue and information provided during the workshop will greatly assist staff in identifying many of the issues that we need to deal with before asking the Board to consider adoption of the general permit. As such, we will ask the Board to consider Agenda Item No. 9, New Waste Discharge Requirements General Permit for Storm Water Runoff Associated with New Developments in the San Jacinto Watershed, as a workshop. We will work closely with the agencies and interested parties to develop a permit that protects the impaired water bodies and allows for continued development within the watershed. This will also address the issue of the need for adequate time to review and comment on the proposal. In the interim, to avoid a situation where projects must wait for the adoption of a general permit, at the workshop we offered to propose individual waste discharge requirements for consideration by the Regional Board for any project within the watershed that would otherwise be unreasonably delayed. We expect that the August 25<sup>th</sup> workshop will provide the Board with significant information concerning these issues.

2. **2000 Clean Water Bond Act** – The public participation process is now underway within the Santa Ana River watershed concerning projects proposed to be funded under the Santa Ana River Subaccount of the Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Bond Act of 2000 (Bond Act). The Santa Ana Watershed Project Authority (SAWPA) is the lead agency within the watershed managing the approximately \$235 million in grants earmarked for the Santa Ana River watershed. SAWPA has implemented a public participation process whereby interested parties have been given an opportunity to submit proposals for projects to be funded under the Santa Ana River Subaccount of the Bond Act. SAWPA has reported that project proposals with costs totaling approximately \$1 billion were submitted. Those projects were then evaluated by SAWPA, and a short list was prepared.

While the short list proposes bond funding expenditures of a little more than \$235 million, including administrative costs, the Bond Act would fund only about 21 percent of the total project costs of the recommend project list. That is, the \$235 million provided by the Bond Act would leverage approximately \$1.1 billion in total project costs.

SAWPA has sought input from Regional Board staff concerning the proposed project priority list, and a public hearing on the list was held on August 1<sup>st</sup>. As

discussed with Board Chair Withers, we were very pleased to see proposed funding (\$56 million) for desalters and desalter infrastructure within the Chino Basin. This funding would provide money for a second Chino Basin desalter, the expansion of the first desalter, and pipelines to intertie desalters (including the Arlington Desalter) and water purveyors. This project is vital so that cleanup of the Chino Groundwater Basin can be initiated, and so that downstream groundwater quality can be protected by intercepting contaminated groundwater that would have entered the Santa Ana River.

We were also very supportive of two flood control projects. One is the Riverside Flood Control Interceptor, proposed by San Bernardino County, and the other is the Eastvale Flood Water Interceptor, proposed by Riverside County. Each of these projects will help to address the severe inundation of the Dairy Preserve that occurs during significant runoff events. They will both intercept storm water runoff from the heavily developed areas north of the Dairy Preserve and divert them into flood conveyance facilities. These projects should significantly reduce flood water-induced discharges from Chino Basin Dairies. SAWPA has proposed to fund these projects at about 45% of their expected combined costs of \$24.3 million.

Of the 22 projects on the proposed funding list, we provided oral comments expressing concerns with only the San Bernardino Valley MWD Baseline Feeder project. This project is proposed for purpose of transporting high quality groundwater from the Bunker Hill Basin into the Chino Basin. On the face of it, this project seems to be reasonable, but no one has yet evaluated the water quality impacts of removing significant quantities of high quality groundwater that theoretically would have flowed down through the groundwater basin along the Santa Ana River from San Bernardino to the Chino Basin. While we did not object to the project, we expressed concerns that significant water quality evaluation still needs to be completed before this project could be initiated.

The public hearing resulted in very few negative comments. SAWPA has done a very good job in moving the process along. It is expected that the State Water Resources Control Board will consider the SAWPA project priority list at a State Board Workshop sometime in September. We will keep you informed of the progress of this matter.

3. **Chino Basin Organics Management Center** – In response to local development pressures, there is significant interest in moving the Chino Basin Co-composting Facility, owned by Inland Empire Utilities Agency (IEUA), from its current location near the California Institute for Women in Chino. Board members may recall that the IEUA is in the process of building Regional Plant No. 5 (RP-5) in the southwestern portion of the Chino Basin, outside of the flood plain of Prado Reservoir. There are many who favor co-locating what has now come to be known as the Chino Basin Organics Management Facility with IEUA's

RP-5. There initially seemed to be significant support for this proposal, but interests in the cities of Chino and Chino Hills seem to have cooled somewhat on the proposal.

IEUA is working diligently to meet the needs of all of the local jurisdictions, their member agencies and the dairy community in coming up with a proposal for an organics management center that would enjoy widespread community support. In support of this effort, all of the stakeholders have begun to participate in monthly meetings to work through the process of developing a proposal and siting an organics management facility. In addition to Regional Board staff, representatives from Chino, Ontario, Chino Hills, the dairy industry, San Bernardino County, IEUA and the development community were in attendance at the August 1<sup>st</sup> meeting. Issues related to siting an organics management facility (composting site) are very complicated politically, and with our important role in regulating the operation of the center, Regional Board staff will closely follow this project. Meetings are scheduled for the first Thursday of each month in Ontario.

4. **Development of the Toxics TMDL for the Newport Bay/San Diego Creek Watershed** – Work on the toxics TMDL is underway on a couple of fronts. Board staff is drafting the Problem Statement, using all available, reliable data to refine the list of toxic pollutants that must be addressed by the TMDL. To provide a little background, the Regional Board placed Newport Bay and San Diego Creek on the Clean Water Act Section 303(d) list of impaired waters in the late 1980's and early 1990's due, in part, to toxic substance concerns. Those concerns were based largely on data on the bioaccumulation of certain metals and organic substances in mussel, freshwater clam and fish tissue. Additional studies have been conducted since that time, and new data on water column and sediment chemistry, toxicity, benthic community structure, etc. must be considered. This review will include the selenium data provided to the Board by Bob Caustin of Defend the Bay at the June 30, 2000 Board meeting, and other relevant selenium documentation. (Based on our review to this point, there is no evidence that selenium is causing or contributing to adverse impacts to beneficial uses or to violation of the narrative toxic substance objectives in the Basin Plan.) Staff expects to complete the Problem Statement and to distribute copies to the Board at the August 25, 2000 Board meeting, or shortly thereafter. A workshop will be scheduled for the Board's October 6, 2000 meeting for a detailed discussion of the Statement.

Concurrently, a comprehensive effort to address what appears to be a significant toxic substance concern (namely, aquatic toxicity due to two pesticides, diazinon and chlorpyrifos) is being spearheaded by John Kabashima, an Agricultural Advisor with the University of California and a member of the Newport Bay Watershed Management Committee. Working with Board staff and other members of the Committee, Mr. Kabashima has convened meetings of parties involved in the application and control of these substances to put together an

action plan to prevent the discharge of these pesticides to surface waters. The chemical manufacturers are also actively involved. These voluntary efforts will be discussed in more detail at the October 6, 2000 workshop.

5. **U.S. EPA Enforcement Action Against H & R Westra Dairy** – In a letter dated July 13, 2000, the U.S. EPA, Region IX, informed H & R Westra Dairy, Chino, of its tentative decision to assess \$45,000 in administrative penalties against them for violations of the Clean Water Act. U.S. EPA's letter contends that on several occasions since January 1999, the dairy operator violated the NPDES permit for this facility by failing to maintain containment structures to retain wastewater within their property. U.S. EPA contends that the lack of containment resulted in unauthorized discharges from the property. Board staff is aware of waste containment problems at the H & R Westra Dairy, but since those problems are significantly influenced by upstream storm water runoff, we have not to date recommended enforcement action against this dairy. We will follow the progress of U.S. EPA's action and advise you of the outcome.
6. **Additional Staff Resources in Budget for 2000-01 Fiscal Year** – The new State budget for the 2000-01 fiscal year will provide significant additional staff resources to the Regional Board. The bulk of these new resources are the result of legislative augmentations of the Storm Water and TMDL Programs.

Our budget for the 1999-2000 fiscal year provided for 68.5 Personnel Years (PYs), and the baseline budget for 2000-01 provided a slight increase to 72.1 PYs. The legislative augmentations increased the budget beyond the baseline. The State Board has proposed tentative distributions of the Storm Water and TMDL augmentations. Under those proposed distributions, we would receive 11.9 additional PYs in the Storm Water Program and 5.6 additional PYs for TMDLs. The State Board also proposed some redistributions between Regions in other programs based on workload, but that has only a minor (-0.4 PYs) effect on us. We have begun work to recruit and hire the additional staff provided for under these augmentations, and we look forward to increasing our efforts in the critical Storm Water and TMDL Programs.

7. **Administrative Civil Liability Complaint for Marriott Ownership Resorts Inc.-**  
On June 8, 2000, Board staff received a complaint from a concerned citizen regarding a discharge from the Marriott Resorts construction site located on Newport Coast Drive. The discharge of suspended red clay and foamy water was to Los Trancos Creek, below the Pelican Hill Golf Course, and ultimately to Crystal Cove. Photographs, video tape footage and water samples of the 5-hour discharge were collected by staff of the Pelican Hill Golf Course and turned over to Regional Board staff.

On June 12, 2000, Board staff inspected the Marriott Resorts construction site. The site superintendent stated that the site had been washed down on June 8, 2000 in preparation for the site's grand opening on June 9, 2000. Staff did not

observe BMPs to address unauthorized non-storm discharges either on site or in the creek. Analysis of the discharge samples showed elevated concentrations of metals, detergent, total suspended solids and chemical oxygen demand.

On August 1, 2000, I issued Administrative Civil Liability (ACL) Complaint No. 00-71 to Marriott, assessing liability in the amount of \$31,700. The assessment was based on an estimated cost savings resulting from not properly disposing of the wash water in the amount of \$1,000; a \$30,000 penalty for the discharge of polluted, non-storm runoff; and \$700 in recovered staff costs for the investigation.

On August 9, 2000, a check for \$31,700 was received from R.D. Olson Construction, the general contractor for the site. Staff is awaiting receipt of the public hearing waiver, which has been promised upon the return of the Marriott executive from vacation.

**8. Administrative Civil Liability Complaint for Van Daele Development Corp.-**

On May 25, 2000, Board staff conducted a routine inspection of the construction site located at Turner Avenue and Riverside Drive in Ontario. Sediment due to construction equipment traffic and soil erosion from graded areas was observed on adjacent public streets. Further, it was noted that prior to staff arrival, a water truck was flushing sediments into nearby storm drain catch basin inlets. The lack of Best Management Practices allowed this sediment-laden discharge to enter the storm drain system and ultimately the receiving waters.

On July 28, 2000, I issued Administrative Civil Liability (ACL) Complaint No. 00-70 to Van Daele, assessing liability in the amount of \$7,560. The assessment was based on an estimated cost savings resulting from non-implementation of BMPs in the amount of \$6,000 (exit stabilization, perimeter sediment controls and storm drain inlet protection); a \$1,000 penalty for the discharge of sediment-laden non-storm runoff; and \$560 in recovered staff costs for the investigation.

On August 4, 2000, at their request, a meeting was held between Board staff and Van Daele representatives. At that meeting, they agreed that inadequate BMPs had resulted in the unauthorized discharge of sediment-laden non-storm water to the storm drain system. However, they pointed out that the use of water as a dust control practice had been encouraged by the City of Ontario, as well as by local residents who had suffered due to excessive dust generation as a result of earlier development projects in the area. Further, they noted that when Board staff informed them that they were not in compliance with the General Permit, they ceased all activities which would result in unauthorized discharges. Finally, Board staff had inspected the site once prior to the violation and twice after the violation and there had been no other violations of the General Permit observed by staff during those inspections. Based on this evidence, I agreed to reduce the liability amount to \$4,000. Van Daele has informed staff that they intend to waive their right to a hearing and staff awaits delivery of the \$4,000 payment and signed waiver form.